United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

74-1917,1946

To be argued by
J. LAWRENCE SILVERMAN

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket Nos. 74-1917, 74-1946

UNITED STATES OF AMERICA,

Appellee,

—v.—

ANTHONY POLITI, GERALD POLITI, PHILIP POLITI, MICHAEL ROMAN, ROBERT PETERS, ALPHONSE CUZZO, ARTHUR FRANGELLO, LEONARD HARRISON, LAWRENCE JOHNSON, LOUIS VISCONTI, EDDIE WASHINGTON, and HARRY WEIS,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

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FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Appellee,

—v.—

ANTHONY POLITI, GERALD POLITI, PHILIP POLITI, MICHAEL ROMAN, ROBERT PETERS, ALPHONSE CUZZO, ARTHUR FRANGELLO, LEONARD HARRISON, LAWRENCE JOHNSON, LOUIS VISCONTI, EDDIE WASHINGTON, and HARRY WEIS,

Defendants-Appellants.

BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

Anthony Politi, Gerald Politi, Philip Politi, Michael Roman, Robert Peters, Alphonse Cuzzo, Arthur Frangello, Louis Visconti, Harry Weis, Lawrence Johnson, Eddie Washington and Leonard Harrison appeal from judgments of conviction entered on June 14, 1974, in the United States District Court for the Southern District of New York after a bench trial before the Honorable Morris E. Lasker, United States District Judge.

Indictment 73 Cr. 56, filed on January 18, 1973, charged the defendants in two counts with conspiracy to operate an illegal policy gambling business in violation of Title 18, United States Code, Section 371 and with operating an

illegal policy gambling business in violation of Title 18, United States Code, Section 1955.*

The case was tried without a jury, and except for the testimony of the Government's expert witness, the proof consisted of stipulated facts. On October 23, 1973 Judge Lasker found all the defendants guilty on both counts.

On June 14, 1974 Judge Lasker imposed the following sentences:

Defendant	*Sentence*
Anthony Politi	Count 1, 1 year imprisonment; Count 2, 3 years probation; $7,500 fine
Gerald Politi	4 months imprisonment; 32 months probation
Philip Politi	2 months imprisonment; 28 months probation
Michael Roman	1 year imprisonment; $2,000 fine
Robert Peters	6 months imprisonment; 30 months probation; $2,500 fine
Alphonse Cuzzo	6 months imprisonment; 30 months probation
Arthur Frangello	3 months imprisonment; 21 months probation; $2,500 fine
Louis Visconti	1 month imprisonment; 23 months probation; $250 fine

* The indictment contained a third count charging Michael Camporeale with making a false declaration before a grand jury in violation of 18 U.S.C. § 1623. This count was severed, and Camporeale was separately tried and convicted.

Defendant	*Sentence*
Harry Weis	3 months imprisonment; 27 months probation
Lawrence Johnson	4 months imprisonment; 20 months probation; $1,500 fine
Eddie Washington	1 month imprisonment; 23 months probation; $250 fine
Leonard Harrison	2 months imprisonment; 22 months probation.

All the prison sentences except Anthony Politi's are to run concurrently on both counts. All defendants are released on bail pending this appeal.

Statement of Facts

A. Introduction

The evidence conclusively established through stipulated testimony of members of the gambling organization and surveillance agents, an abundance of physical evidence and expert testimony that all of the defendants named in the indictment were involved in a large scale, highly organized policy operation in Poughkeepsie and Newburgh, New York.* A sampling of the gambling operation's records seized at several different policy "banks" showed that during the period from September 1, 1970 to September, 1972, on two separate days the business grossed over $15,700 and $8,600 (850a, 845a). Despite a series of FBI and State Police arrests beginning in January, 1971, the operation continued uninterrupted, six days a week, for several years.

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* Anthony Politi and Harry Weis had previously been tried and acquitted of having participated in a policy operation in Westchester County, New York during the period March 16, 1971 through May 24, 1971 and conspiracy so to do.

The defendants' organization, typical in form, was structured in a pyramid. At the lowest level were "runners" or "writers" who took bets from the public in Newburgh and Poughkeepsie, each bet being a three digit number and the winning bet each day being based on the "handle" or total bets at some selected racetrack. Each runner took his accumulated betting slips and the money bet with him for the day to a central location or "spot", usually maintained by a "controller." The policy bets and monies were then separated and the "work", *i.e.*, betting slips, was transported first by "pickup" men and then by trusted "collectors" to a central business office or policy "bank". The bank employees tabulated the gross receipts received from all the collectors, and prepared adding machine "tapes" or policy "ribbons" enumerating each runner's account for that day and the amounts to be paid to each runner's winning bettors. Those tapes were then returned the following day by collectors to controllers, who settled up with their runners, who, in turn, paid off winning bettors (836a-38a).

Voluminous policy records, in some instances bearing fingerprints of defendants Anthony Politi, Michael Roman, Leonard Harrison and Lawrence Johnson, were seized from three policy banks located in New Jersey, Rockland County and Yonkers, New York and from Michael Roman, Lawrence Johnson, Leonard Harrison, Eddie Washington, Robert Peters and Arthur Frangello.

B. Origins and Management: Anthony Politi, Michael Roman and Robert Peters

In June 1968 Anthony Politi told Acrel Simon that he wished to set up a policy gambling business in Newburgh, New York. Shortly thereafter Acrel Simon arranged for Anthony Politi to meet with Eddie Washington and several others who were then employed as "runners" in local Newburgh operations. At that meeting Anthony Politi told the assembled runners that he would pay each runner up to 30% of the total bets each of them collected and each bettor

up to $500 for $1 bet on each winning wager. Eddie Washington told Anthony Politi that he was already turning in his numbers to a man named Allan Handler. About a week thereafter, Anthony Politi met with Acrel Simon, Eddie Washington and Allan Handler to discuss the new operation, and a few days later told Acrel Simon that Alian Handler would be the "boss" ("controller") of Newburgh and would be responsible for the overall collection of policy work in that area. Simon then began delivering to Allan Handler the policy work and money that he collected from Washington and several others in the Newburgh area (39-40a).

In June 1969 Simon accompanied Allan Handler to Poughkeepsie where they met Lawrence Johnson and several others. Handler offered to Lawrence Johnson the same percentages being paid in Newburgh. After an agreement was reached Lawrence Johnson was put in control of the Poughkeepsie operation. Thereafter, Simon collected policy work and money from Johnson in addition to the Newburgh work, delivering both to Handler. Simon continued his job three hours a day, six days a week, receiving $300 a week until June 1971 when he was discharged because of a disagreement with Anthony Politi, Philip Politi and Allan Handler (41-42a).

Anthony Politi, Michael Roman and Robert Peters * managed and supervised the policy organization. All three participated in the hiring and firing of organization personnel (39a, 81-82a, 43a). Anthony Politi decided the

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* Politi and Roman described themselves and were referred to by others in the operation as the "big boss" (50a, 81a) and "top man" (52a) in the policy gambling operation. Upon being hired, organization employees were told by Robert Peters to deny knowing Anthony Politi if they were ever arrested (44a). Peters reiterated this warning to two witnesses, who had been employed by the organization, after they had been subpoenaed to testify before the Grand Jury which later returned the indictment in this case (47a, 64a).

positions and wages of the operation's personnel and fixed the amounts to be paid to the runners and winning bettors (39a). Michael Roman and Robert Peters, on a daily basis, received from bank employees the "tapes" showing the entire day's tabulations (50a, 76-78a, 82a).

Anthony Politi made several attempts to corrupt public officials in order to protect the operation's employees from arrest. In late 1968 Anthony Politi met with Acrel Simon and Allan Handler and asked Acrel Simon who he should pay in order to protect the operation in Newburgh. Simon introduced Anthony Politi to Earl Livingston, who advised Politi that he could not immediately pay off the appropriate public officials. At Livingston's suggestion, Politi gave Livingston $200 to set up a party so that the Mayor and the "right people" could be invited (40a).

In October 1970 Anthony Politi met with Raymond Shaw, a New York State Police Investigator posing as a corrupt police officer, and arranged for Shaw to be put on the policy operation's payroll. After Politi had given Shaw $1,000, Roman met with Shaw and provided him with information relating to competing policy operations. Roman gave Shaw a telephone number which he should call to warn of any impending police raid and agreed that Shaw might arrest lower level runners in the gambling operation so as to appear diligent to his police superiors (49a, 52-54a).

Politi, Roman and Peters operated their gambling business in utter disregard for the law. They recruited new personnel, previously not involved in gambling activities by offering them high wages for only a few hours work in order to replace those arrested or identified by Federal and State agents.

While organization employees were usually replaced after their arrest, Politi, Roman and Peters continued to manage the operation even after their own arrests.

In January 1971 Anthony Politi and Roman were arrested by New York State police in one of the organization's policy banks located at the Bobbin Inn Motel, Rockland County, New York. The police also seized numerous policy bets and gambling records, which included an entry reflecting a $1,000 payment to undercover agent Shaw (48-49a).

Roman was subsequently arrested in June 1972 during a search of another policy bank located at 77 Broadway, Park Ridge, New Jersey, and with Politi and Peters in August, 1972 as the latter retrieved policy tapes left by Gerald Politi in a telephone drop in Yonkers, New York.

C. Bank Employee

One bank, in Yonkers, was shown to be under the exclusive control of Alphonse Cuzzo (16a, 847-49a). Cuzzo also was observed on several occasions delivering bank tapes to Michael Roman via a telephone booth drop (76-77a).

D. Collectors: Philip Politi, Gerald Politi and Harry Weis

The winning number in a policy operation is based on the outcome of the parimutuel handle or total bets received at one of several racetracks. It is crucial to the success of a policy operation that the policy bets be in trusted hands by the time the total parimutuel handle is publicly known to prevent runners from putting in winning bets thereafter. Philip Politi, Gerald Politi and Harry Weis were the organization employees who received the work from local area pickup men and delivered it to the policy banks after the winning number became publicly known (41a, 44-47a, 63a).

Additionally, Philip Politi and Gerald Politi had direct responsibility for assuring that lower level pickup men and runners delivered the policy bets cautiously and on time (47a, 64a). They introduced new runners to the pickup

spots, provided them with hiding places for the work and instructed them on the procedures to be strictly followed if they believed they were being surveilled by the police (46a).

E. Newburgh-Poughkeepsie Personnel: Eddie Washington, Arthur Frangello, Leonard Harrison, Lawrence Johnson and Louis Visconti

As described above, in the early stages of the operation, all Newburgh and Poughkeepsie runners delivered their work to Acrel Simon, who, in turn, passed it on to Allan Handler for delivery up the line. In the summer of 1971, Handler and Simon left the operation. Thereafter, Washington, Harrison and Frangello, in Newburgh, and Johnson in Poughkeepsie transmitted the work of their runners directly to Visconti or others working for him, who, in turn, delivered it to one of the trusted collectors (43-47a, 50-51a, 63-64a, 81-83a).

ARGUMENT

POINT I

The District Court properly received evidence relating to the origin of the conspiracy charged in the indictment.

The defendants argue that the District Court erred in admitting the stipulated testimony of Acrel Simon with respect to certain statements and meetings which occurred in 1968 and 1969. The challenged evidence included statements by Simon that Anthony Politi had told Simon in 1968 that Politi was setting up a gambling business in Newburgh and discussed percentages and odds. Simon's testimony also covered meetings and discussions with Anthony Politi, Eddie Washington and others concerning

the efforts to organize the gambling operation in Newburgh in 1968 and 1969. It is argued that since this evidence antedated the September 1, 1970 commencement date of the conspiracy alleged in the indictment, it constituted inadmissible proof of other crimes. The argument is without merit.

Judge Lasker correctly ruled that the evidence relating to Simon's 1968 meetings and conversations with Anthony Politi were admissible "to show the beginning of 'Politi's involvement in the criminal enterprise and his state of mind at the time'" (954a). *United States* v. *Del Purgatorio*, 411 F.2d 84, 87 (2d Cir. 1969); *United States* v. *Bozza*, 365 F.2d 206, 212-14 (2d Cir. 1966); *United States* v. *Ferrara*, 458 F.2d 868, 874 (2d Cir. 1972), *cert. denied*, 408 U.S. 931 (1973).

All of the challenged evidence concerning "these events preceding the conspiracy was admissible to prove the intent, purpose and aim of the parties to the conspiracy." *United States* v. *Cioffi*, 493 F.2d 1111, 1115 (2d Cir. 1974); *United States* v. *Cohen*, 489 F.2d 945, 949 (2d Cir. 1973); *United States* v. *Costello*, 352 F.2d 848, 854 (2d Cir. 1965), *rev'd on other grounds*, as *Marchetti* v. *United States*, 390 U.S. 39 (1968); see *United States* v. *Mallah*, Dkt. No. 74-1327 (2d Cir., September 23, 1974) slip op. 5475 at 5488; *United States* v. *Nathan*, 476 F.2d 456, 459-60 (2d Cir.), *cert. denied*, 414 U.S. 823 (1973); *United States* v. *Super*, 492 F.2d 319, 323 (2d Cir. 1974); *United States* v. *Colosurdo*, 453 F.2d 585, 591 (2d Cir. 1971), *cert. denied*, 406 U.S. 917 (1972); see also *United States* v. *Dennis*, 183 F.2d 201, 231 (2d Cir. 1950), *aff'd*, 341 U.S. 194 (1952); *United States* v. *Marchisio*, 344 F.2d 653, 667 n.11 (2d Cir. 1965).

POINT II

The defendants were properly convicted of conspiracy to violate Section 1955 as well as the substantive crime of operating an illegal gambling business.

The defendants argue that their convictions for conspiracy to violate Section 1955 are duplicative, because they were also convicted of the substantive offense of operating an illegal gambling business, which itself, requires proof of multiple participants. This argument has been squarely rejected by this Court, *United States* v. *Becker,* 461 F.2d 230, 234 (2d Cir. 1972), *vacated on other grounds,* 94 S. Ct. 2597 (1974); *United States* v. *Fino,* 478 F.2d 35, 38 (2d Cir. 1973), *cert. denied,* 94 S. Ct. 2623 (1974) and by virtually all of the other Circuits which have considered the question. *United States* v. *Vaglica,* 490 F.2d 799, 800 (5th Cir. 1974); *United States* v. *Pacheco,* 489 F.2d 554, 558 (5th Cir. 1974); *United States* v. *Bobo,* 477 F.2d 974, 987 (4th Cir. 1973); *United States* v. *Iannelli,* 477 F.2d 999, 1002 (3d Cir. 1973), *cert. granted,* 94 S. Ct. 2602 (1974). *Contra, United States* v. *Hunter,* 478 F.2d 1019, 1026 (7th Cir.), *cert. denied,* 414 U.S. 857 (1973).

Although the United States Supreme Court has granted *certiorari* in *United States* v. *Iannelli, supra,* to consider this issue, *Becker* and the other authorities cited foreclose any further argument here.

POINT III

The Government amply proved that the defendants' illegal gambling business involved violations of New York State Law.

Defendants launch a number of attacks on the allegations of the indictment and the proof thereunder that the defendants' policy gambling business violated New York Penal Law Sections 225.05 ("Promoting gambling in the second degree") and 225.15 ("Possession of gambling records in the second degree"). None of the arguments has any merit.

(a) *The indictment was not "jurisdictionally defective."* Tracking Section 1955's definition of an "illegal gambling business" as one which "is a violation of the law of a State . . . in which it is conducted," the indictment charges that the defendants' policy business was "a violation of the law of the State of New York, to wit, Penal Law Sections 225.05 and 225.15 . . ." Defendants contend that the indictment is "jurisdictionally defective," claiming that Section 1955 did not contemplate the incorporation of state statutes punishing possession of policy slips. The argument is entirely frivolous for several reasons.

In the first place, even if defendants were correct in their claim that the indictment improperly incorporates Section 225.15, the indictment alleges that the defendants' policy business violated not only Section 225.15, but also Section 225.05 of the Penal Law, a section which punishes the "promotion" of gambling businesses and which defendants apparently concede to be a proper subject of incorporation into Section 1955.* The fact that the indictment

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* It should be noted that although defendants choose to minimize the significance of the possessory crime as compared to "promoting", New York State law treats both crimes as Class A misdemeanors, punishable by up to one year in prison.

alleges the two violations in the conjunctive does not require that the Government prove both. See, *e.g., United States* v. *Cioffi,* 487 F.2d 492, 499 (2d Cir. 1973); *Joyce* v. *United States,* 454 F.2d 971, 976 (D.C. Cir. 1971).* And since Judge Lasker specifically found that the defendants' business promoted gambling in violation of Section 225.05 (955-60a), this is not a case where the finder of fact might have based the verdict on an improper legal theory. See, *e.g., Street* v. *New York,* 394 U.S. 576, 585-88 (1969).

In any event, Section 225.15 was properly incorporated into the indictment. Although defendants are certainly correct in announcing the obvious proposition that Congress never intended to turn mere possession of policy slips into a federal crime (Brief, p. 27), that is *not* the result of using a statute punishing possession of policy slips as the incorporated state crime under Section 1955. Section 1955 punishes any participant in a gambling business which (i) violates state law, (*ii*) *involves at least five participants,* and (iii) *runs for more than thirty days or is shown to gross at least $2,000 in any one day.* The obvious purpose of Section 1955 is to provide federal jurisdiction over large scale gambling operations which violate state law, and the italicized elements insure that. Nothing in the Section or its legislative history suggests that the state law section alleged and proved cannot be the traditional crime of illegal possession of gambling records.**

(b) *The Government proved overwhelmingly that the defendants' business operated in violation of Penal Law Section 225.05.* Ignoring the mountain of uncontested proof

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* The cases cited at page 22 of defendants' brief are entirely irrelevant since they deal only with the traditional requirement of specificity in pleading.

** Moreover, as Judge Lasker noted in his opinion below, the cases under Section 1955 demonstrate that it reaches all participants in "illegal gambling businesses", even those low level "runners" as to whom proof of mere possession of policy slips is likely to be the only evidence available. *E.g., United States* v. *Becker,* 461 F.2d 230, 232 (2d Cir. 1972).

that they operated in concert an organized policy gambling business, and relying only on inapplicable cases construing other statutes, defendants claim that the Government failed to prove that the defendants' business violated Section 225.05 of the Penal Law. The argument is frivolous.

Section 225.05, the key section in the New York State Legislature's 1967 revision of the gambling laws, punishes any person who "Knowingly advances or profits from unlawful gambling activity." "Gambling" includes the type of numbers operation involved in this case (Section 225.00 (2)). The words "advances gambling activity" include, among other things,

> ". . . conduct directed toward the creation of establishment of the particular [gambling operation] involved, toward the acquisition or maintenance of premises, paraphernalia, equipment, or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation." (Section 225.00 (4)).

A person "profits from gambling activity" when he "accepts or receives money . . . pursuant to an . . . understanding with any person whereby he participates or is to participate in the proceeds of gambling activity" (Section 225.00(5)).

Defendants' suggestion that their policy gambling business was not proven at trial to involve repeated violations of this section is ludicrous.* Although there is no require-

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* Contrary to defendants'assertion (Br. at 55), Section 225 obviously does not require proof of the acceptance of wagers,

[Footnote continued on following page]

ment in Section 1955 that each, or indeed any defendant be shown to have violated the state law himself, the Government's statement of facts, *supra*, demonstrates that each defendant in fact "advanced" the operation of the business in one of more of the ways in which the Penal Law defines that term.*

(c) *The Government proved overwhelmingly that the defendants' business operated in violation of Penal Law Section 225.15.* As indicated above, the Government was not required to prove that the defendants' illegal gambling business violated both Section 225.05 *and* Section 225.15, but could prove a violation of either. However, the proof of violations of Section 225.15 was equally strong as that

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since it specifically punishes not only "profiting" from gambling activity." Although defendants claim in this portion of their brief (Br. at 58-62) that the Government failed to prove possession of gambling slips "conclusively", it should also be noted that Section 225.05 does not require proof of possession of gambling slips. In any event, as demonstrated, in the discussion of the sufficiency of the Government's proof under Section 225.15 (*supra*, Point (c)), the Government amply showed that the defendants' gambling business did involve illegal possession of policy slips.

* Defendants also complain (Br. at 62-65), that "the Government did not prove some specific "sporting event" on the outcome of which the wagering involved depended. Again, the defendants simply mislead the Court by citing cases interpreting old Penal Law sections which are not involved here, *e.g.*, *People* v. *Abelson*, 309 N.Y. 643 (1956), discussed at pages 62-64, which deals with the old Penal Law's anti-bookmaking Section 986. Section 225.00's definition of gambling activity requires only proof that wagers were made upon "a contest of chance or a future contingent event not under the bettor's control." This element was easily satisfied by the Government's expert testimony that betting slips and other records, which the expert examined, showed winning numbers to have actually been computed on the basis of racetrack results (841a). In any event, of course, as Judge Lasker correctly noted in his opinion, absence of proof of any particular contest or event would not affect the defendants' conviction on the conspiracy count, which alleged only an *agreement* to operate an illegal policy gambling business (959-60a).

of violations of Section 225.05. Section 225.15 requires proof that the defendants, with knowledge of their contents, possessed policy records.

Through stipulated testimony it was established that seven defendants, Philip and Gerald Politi, Frangello, Harrison, Johnson, Visconti, Washington, and Weis possessed policy bets during their collection and transportation activities. Gerald Politi, the only one not in possession of policy "work" when arrested, retrieved policy "work" from hiding places after it had been examined by Federal agents.

Anthony Politi, Roman, Peters and Cuzzo were not involved in the collection and transportation of policy bets. As management, they prepared and transported the policy tapes enumerating the organization's daily disbursements. Cuzzo on numerous occasions placed these tapes in a telephone drop, while Peters was arrested in possession of policy tapes hidden by Gerald Politi.

Anthony Politi and Roman were arrested in the Bobbin Inn policy bank. Roman also was arrested at the 77 Broadway bank. On a third occasion two rolls of $1,000 and $930 in cash, each of which included a slip of paper with numerical notations, were found at the feet of Politi and Roman, respectively, while they were seated in Peters' automobile. The amount of money found at Roman's feet coincided with the figures reflected on the operation's records for Newburgh-Poughkeepsie seized the same day at the 15 Eastview policy bank.

POINT IV

Defendants' various attacks on the Broadway and Eastview warrants have no merit.

Defendants contend that the searches of 77 Broadway in Park Ridge, New Jersey ("Broadway") and of 15 Eastview Avenue in Yonkers, New York ("Eastview") were based on defective warrants and that the Trial Court therefore erred in receiving the evidence seized thereunder. Defendants' various attacks on the warrants are meritless.

A. Standing

All of the defendants appear to raise Fourth Amendment claims with respect to the Broadway and Eastview searches. With regard to the Broadway warrant, it is clear that only appellant Roman had standing to challenge the search. As for the Eastview warrant, only appellant Cuzzo, in whose room the evidence was found, has standing to attack the search. None of the other appellants have standing to contest the admission of this evidence against them. *Brown* v. *United States,* 411 U.S. 223, 229-30 (1973); *Alderman* v. *United States,* 394 U.S. 165, 174 (1969); *Wong Sun* v. *United States,* 371 U.S. 471, 492 (1963); *United States* v. *Capra,* Dkt. No. 74-1068 (2d Cir., July 26, 1974), Slip op. 4985 at 4991, 5009-10.

B. The Broadway Warrant

1. *The Broadway warrant sufficiently particularized the premises to be searched.*

Defendants argue that the Broadway warrant should fall because it incorrectly described the premises to be searched as a one-family rather than a two-family residence. However, after a full hearing, Judge Lasker found the following:

"The Government has submitted 26 photographs and Roman has submitted six photographs of the premises which are admitted as exhibits in the evidentiary hearing. I have carefully studied the photographs and conclude that without question the building to all outward appearances is a one family house. There is only one front doorway. In the photographs submitted, there appears to be only one mail box, although I recognize the stipulation to the contrary. The only window in the second floor which can be viewed from the front of the premises is a single dormer window, surely not suggesting that a separate apartment exists on the second floor. The neighboring houses also appear to be one family houses. No utility meters are in view on the outside of the building which could have given a clue as to the number of occupants. It is true that photographs of the side, and particularly the back of the house, show windows at second floor level and, at the back, a separate entrance proceeding from the ground level by stairs to the second floor. However, these indicia are not inconsistent with single family occupancy and on examination suggest no more than that as a matter of convenience a second floor exit had been built at the back of the house for the use of the family" (372-73a).

The District Court properly concluded that the building was a one-family house "to all outward appearances * and

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* The fact that 77 Broadway's outside appearance gave no indication that it was a two family building sufficiently disposes of defendants' argument that this Court should reverse to punish the Government for not examining Building Inspector's records and thereby discovering that the building in fact housed two families. In any event Judge Lasker properly found it reasonable for the agents not to search the records, since they were aware that Roman had already been convicted of bribery of State Police Officers, and had reason to believe that their inquiry might cause a leak fatal to the investigation (374-75a).

that the agents' reliance on those appearances was proper. *United States* v. *Santore,* 290 F.2d 51 (2d Cir. 1960).*

2. *The Broadway warrant amply established probable cause.* FBI Agent Reutter's June 1, 1972 affidavit requested permission to search the Broadway premises based on information from two informants, corroborating surveillance by FBI agents, and a statement describing the structure and operation of a typical policy gambling business.

The informant information was as follows:

> "3. Informant number one is a person who has been supplying information concerning gambling cases to the Federal Bureau of Investigation for greater than two years. This informant, whose information has been consistently corroborated, has been contacted on a regular basis at least two times each month. Information given to the Federal Bureau of Investigation by this informant has led to 15 arrests for Federal gambling violations.
>
> 4. Confidential informant number two has been supplying information concerning gambling offenses to local and federal authorities for longer than one year. This person who has been contacted by the Federal Bureau of Investigation on a three times per month basis, has given data which has been consistently corroborated and which has resulted in 10 arrests for gambling offenses and one successful wiretap of a criminal gambling operation.

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* Appellants claim that Judge Lasker "misread" *Santore.* However the only fact distinguishing this case from *Santore* was the fact that a review of public records would not have shown the dwelling there to be two-family, since the defendant had subdivided the building without official permission. As the footnote, *supra,* indicates, Judge Lasker properly concluded that this factual distinction should not produce a different result.

5. During the month of May, 1972 informant number one *advised the Federal Bureau of Investigation* that he was a *personal acquaintance* of Michael Roman and that he had many opportunities to talk to him. During May of 1972 this informant told the Federal Bureau of Investigation that Roman said that he, **Roman,** *was in charge of the policy operations in Orange and Dutchess counties of New York State* and that he, Roman, *did the work on the Orange and Dutchess policy at the end of each day.* This informant advised that Roman himself prepared tabulations which he gave to a runner in the early morning hours. The preparation of these tabulations, or tapes, Roman said, was *done on the west side of the Hudson River.* Roman indicated that because of numerous raids by the New York State Police that the policy work which *he did would not be done in New York.*

6. *Informant number two* who also knows Michael Roman and has had an opportunity to speak with him told agents of the Federal Bureau of Investigation that he knew, through conversations with MICHAEL ROMAN, *that ROMAN had control over the policy gambling operations in the Newburgh, Beacon, and Poughkeepsie areas of New York state.* ROMAN also told this person that an individual known as Lou Visconti would take the money from the Newburgh, Beacon, Poughkeepsie gambling operations to ROMAN at the end of each day. On the next day either Lou Visconti or the person who brought ROMAN the policy gambling material from the Dutchess and Orange county gambling operations would return with the 'ribbons.' Both informant number one and informant number two indicated to the Federal Bureau of Investigation that they were certain, because of their conversations with Roman, that he was a part of a bigger gambling operations" (emphasis added).

Reutter, who had participated in more than thirty gambling investigations, explained in his affidavit that runners take bets from many gamblers and then drop off the records of bets made at a "spot"; that the bets from various spots are taken to a "bank" at the end of the day, where the business' basic accounting takes place; and that early the next morning a gambling business employee takes the win and loss records from the previous day back to the spots (351a).

The FBI surveillance encompassed the following: (1) policy "spots" in Poughkeepsie and Newburgh, employing nine and ten "runners" respectively observed on an "almost daily" basis since January 13, 1972 (351-52a); (2) pick-ups by Visconti from the Newburgh and Poughkeepsie "spots" on four occasions in April and May, 1972, as recently as eight days before the warrant issued, followed by meetings between Visconti and Roman, at two of which (ten and eight days before the warrant), Visconti left a bag in Roman's car (352a); (3) an early morning meeting between Roman and Visconti thirteen days before the warrant, after which Visconti travelled back to the "spots" (352a); (4) early morning meetings fourteen and fifteen days before the warrant, between Roman and an unidentified woman who had been seen picking up bets from the spots on the previous day, and who returned to the spots shortly after meeting Roman (352a); (5) several observations in the month previous to the warrant, one eight days before, of gambling work being taken to southeastern Westchester County, and an observation on the latter day of Roman travelling to, entering briefly and then leaving an inoperative phone booth in southeast Westchester late in the evening, after which Roman travelled to 77 Broadway, Park Ridge, New Jersey (352-353a), and (6) observations of Roman at the same time of night one, three, four and five days before the warrant was obtained (352-353a).

Finally, the affidavit stated that Roman had eight prior gambling arrests, two of which, in 1971, took place at policy banks, and one of which, within thirty days of the warrant, disclosed Roman in possession of policy records.

Although those allegations would seem to have made it almost a certainty that 77 Broadway was a policy bank, defendants raise the following complaints:

(a) *"Double Hearsay"*. Defendants complain that the information given by Informant "Two" came to Reutter indirectly, through other FBI agents. In the first place Informant "Two" added almost nothing of substance to the affidavit.* Informant "One's" information, that Roman had admitted doing the bank work at night at a location west of the Hudson and then turning it over in the early morning hours, coupled with the FBI's detailed surveillance, the background on Roman, and Reutter's explanation of policy bank procedures, was more than a sufficient basis for concluding that 77 Broadway was a bank. In any event, as this Court stated in *United States* v. *Fiorella,* 468 F.2d 688, 691 (2d Cir. 1972):

> ". . . the mere fact than an affidavit contains 'double hearsay' does not automatically make it insufficient to supply probable cause. United States v. Smith, 462 F.2d 456 (8th Cir. 1972); United States v. Becker, 334 F. Supp. 546, 549-550 (S.D.N.Y. 1971), aff'd, 461 F.2d 230 (2d Cir. 1972); United States v. Carney, 328 F. Supp. 948 (D. Del. 1971); United States ex rel. Crawley v. Rundle, 312 F. Supp. 15 (E.D. Pa. 1969). Rather, the question is whether the information given by the informant, taken in the light of the totality of circumstances, can reasonably be said to be reliable. United States v. Smith, supra,

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* Informant "Two" did identify Visconti by name as one of several persons to whom Roman gave tabulations, but that added nothing to the F.B.I.'s own observations of Visconti's meetings with Roman.

462 F.2d at 460; United States v. Becker, supra, 334 F. Supp. at 550 and n. 14. Here the underlying circumstances give substantial assurances as to the reliability of the information. Not only were the informants ones whose past reliability had been demonstrated and whose opportunity to obtain the information was clearly set forth, but there was also at least some independent corroboration of the tips.

(b) *Informant reliability.* Defendants make the utterly false contention that the informant information was "conclusory", and that the FBI surveillance did not contain sufficient factual detail to "enable a magistrate to share in the conclusion that [the observed] 'meetings' and other activities are related to gambling" (Brief, pp. 76-78). In fact the substance of each informant's information was explicit details of Roman's conduct in the gambling business, which, according to the affidavit, was related to the informant by Roman himself. This alone was sufficient to demonstrate that the informants' information had a reliable basis. *United States* v. *Sultan,* 463 F.2d 1066, 1068 (2d Cir. 1972). As for the FBI surveillance, the detailed observations were, in light of Reutter's informed explanation of policy procedures, unmistakably descriptive of a policy gambling operation, and fully confirmed the accuracy of the informant information.

(c) *Staleness.* Equally worthless is defendants' claim that the information in Agent Reutter's affidavit was stale. Informant "One's" information was not more than thirty days old, and the FBI surveillance, which directly tied in with and corroborated the information, continued up to two days before the warrant.*

* Defendants falsely state that the affidavit does not indicate when FBI observations had been made "since the 13th of January," 1972. In fact the affidavit states that the observations had been made "on an almost daily basis" since that date, and goes on to detail a number of specific observations within two weeks of the issuance of the warrant.

(d) *Jurisdictional allegations.* Defendants contend that Agent Reutter's affidavit does not establish probable cause to believe that a search at 77 Broadway would disclose evidence of violations of the section referred to in the warrant, Title 18, United States Code, Section 1952, which punishes interstate travel in aid of illegal gambling businesses. However, the affidavit specifically alleges travel by Roman between Westchester County and what was plainly a policy bank in New Jersey, and so the claim is utterly meritless.

C. *The Eastview warrant amply established probable cause for the search.* Agent Reutter's affidavit of August 28, 1972 requested permission to search the Eastview premises based on information from two informants, FBI surveillance, and another statement by Reutter of policy gambling procedures.

The informant information was as follows:

> 3. Confidential informant number one has been supplying information concerning gambling offenses to federal authorities for longer than five months. This person, who has been contacted by the Federal Bureau of Investigation on a bi-weekly basis, has given data which has been consistently corroborated and which has resulted in 19 arrests for gambling offenses.
>
> 4. Confidential informant number two is a person who has been supplying information concerning federal offenses to the Federal Bureau of Investigation for at least 18 months. This person has been contacted by agents of the Federal Bureau of Investigation on a monthly basis and the information he has given, which has been consistently corroborated, has resulted in 23 arrests for Federal gambling violations.

* * * * *

6. Informant number one is a person who is an acquaintance of HOKE ROBERTS and as such has had conversations with him over the past two years. On numerous occasions he has had an opportunity to place policy bets with HOKE ROBERTS at 22 North Perry Street, Poughkeepsie, New York. As a result of his conversations with HOKE ROBERTS and as a result of his own gambling activities informant number one knows that:

a. HOKE ROBERTS operates a policy gambling operation in the Poughkeepsie, New York area with the "spot" located at 22 North Perry Street, Poughkeepsie, New York. HOKE ROBERTS employs several runners. On several occasions during the past five months informant number one has placed policy bets with ROBERTS or various runners employed by ROBERTS. Some of these bets were placed at 22 North Perry Street. At the time he placed these bets he was able to converse with these men concerning their gambling operations. Informant number one was told by these men that there is a location in Newburgh, New York where "pickup men" from several different policy "spots" deposit their gambling bets. These are collected at the Newburgh location and given to a Negro female who transports the entire package to another "pick-up man", closer to the policy bank.

7. Informant number two is a person who knows ALPHONSE CUZZO for several years and who has discussed policy gambling with him on occasion during that period of time. This informant reported that he was told by CUZZO that he, CUZZO receives all the policy bets from the mid-Hudson Valley and Rockland County, from a "pick up man". CUZZO stated that he then takes these policy bets to a house in Yonkers, New York, where he and his girlfriend, DONNA RUBEO, do the "bank work."

> (That is, CUZZO and RUBEO compute the daily receipts from each "runner" and the number of "hits" and the portion of the profits to be split among the "spots" and the "runners".) CUZZO stated that after he has done the "bank work" he takes the "ribbons" to a "drop", where MICHAEL ROMAN picks them up.

In addition to covering the same basic information about gambling procedures set forth in the affidavit supporting the Broadway warrant, see p. 20, *supra,* Reutter's affidavit contained the following explanation:

> "After all the bets are collected in the 'spot' an individual commonly called a 'pickup man' will collect bets from various 'spots' and take them to a location commonly known as a 'policy bank.' In many instances, in order to prevent detection by police authorities, a policy gambling enterprise will employ several 'pickup men' to pass the policy bets, seriatim, from the 'spots' to the 'policy bank.' At the policy bank the accounting for the day's wagers is done by trusted employees of the gambling enterprise. . . . After the tabulations are completed at the 'bank' (these tabulations are called in the gambling parlance 'ribbons') they are delivered to a high level figure of the gambling enterprise, known as the 'controller' " (153a-56a).

The FBI surveillance encompassed the following: (1) "Almost daily" observations, starting on January 13, 1972, of policy "spots" in Poughkeepsie and Newburgh, including a spot at 22 North Perry Street, Poughkeepsie (157a); (2) "More than ten" observations between January 13, 1972 and August 17, 1972 of about forty people per day entering the policy spot at 22 North Perry Street, many carrying slips of paper and money (157a); (3) Observations of Hoke Roberts at 22 North Perry Street beginning

July 14, 1972, Roberts having been arrested there by local authorities on a promotion of gambling charge in March, 1970, and having been released in February, 1972 after serving six months in prison on that charge (157a); (4) observations on August 4, 7, 8, 9, 11, 16 and 17, 1972, of "John Doe" taking policy work from 22 North Perry Street to Newburgh, New York, where he delivered it to one Melvin Allan (158a); (5) observations on August 21, 1972 of "John Doe" carrying policy work from 22 North Perry Street, Poughkeepsie, to a house on Gidney Avenue in Newburgh (158a); (6) observations of "John Doe" going from 22 North Perry Street to Gidney Avenue on August 22-25, 1972 (158a); (7) observations of Melvin Allan carrying work to the Gidney Avenue house on August 21 and 22, 1972 (158a); (8) observations on August 21 and 22, 1972, of "Jane Doe" leaving the Gidney Avenue house and then passing work to one Beeman Bowman, Jr. (158a); (9) observations on August 8, 14, 18, 19 and 22, 1972 of Bowman meeting with Alphonse Cuzzo, after which Cuzzo, on each occasion, went to 15 Eastview Avenue in Yonkers (158a); (10) the following observations on August 23, 24 and 25, 1972: entry by "John Doe" and Allan into the Gidney Avenue house carrying a package; shortly thereafter "Jane Doe" entered the house and exited with a large purse, which she passed to Roman Cassiano; Cassiano then met with Bowman in Beacon, New York; Bowman then travelled to Elmsford, New York, where he met with Cuzzo; Cuzzo then went to 15 Eastview, Yonkers; later Cuzzo, accompanied by Donna Rubeo, went to a telephone booth in Yonkers and was observed leaving envelopes under the telephone, which were later picked up by Michael Roman (158a-59a).

Reutter went on to allege that on June 2, 1972, the FBI had raided a bank controlled by Roman (a reference to the Broadway seizure, discussed above) and had there seized envelopes of the same kind that Cuzzo and Rubeo

were seen to leave at the telephone booth for Roman on August 23-25, 1972; and that notes contained inside the envelopes stated that Beeman Bowman had "come late to the telephone booth" and had "taken part of his salary out of the receipts (159a).

Reutter's affidavit ended with a "synopsis", explaining the significance of the observations detailed above:

> A policy gambling "spot" is operated at 22 North Perry Street, Poughkeepsie, New York by HOKE ROBERTS; JOHN DOE "runs" the policy work to the Gidney Avenue house in Newburgh, New York. MELVIN ALLAN also "runs" policy work to the Gidney Avenue house. JANE DOE brings this policy work to ROMAN M. CASSIANO who, in turn, brings it to BEEMAN BOWMAN, JR. BOWMAN then turns the work over to ALPHONSE CUZZO who, together with DONNA RUBEO, does the "bank work" at 15 Eastview Avenue, Yonkers, New York. After this is completed CUZZO and RUBEO bring the "ribbons" to a telephone booth within a service station located on the Saw Mill River Parkway, where it is picked up by MICHAEL ROMAN.

Again these facts would seem to have gone far beyond a showing that 15 Eastview was probably a policy bank. Once again, however, defendants raise a series of worthless claims.

(1) "*Double Hearsay*": As in the case of the Broadway warrant, defendants complain that informant "Two's" information reached Agent Reutter via other agents. Here again, however, the informant's past reliability had been demonstrated, his access to the information stated was clearly set forth, and extensive FBI surveillance fully corroborated his information. See *United States* v. *Fiorella, supra,* 468 F.2d at 691.

(2) *Informant reliability.* Again the defendants simply ignore the facts alleged in the indictment and call the informant information and FBI surveillance "conclusory". As in the case of the Broadway warrant, however, the substance of each informant's information was details of the business given directly to the informant by participants in the illegal business, and the FBI surveillance included a series of acts and meetings which unmistakably described an illegal gambling operation and which confirmed all the essential details in the informant information. *United States* v. *Sultan, supra.*

(3) *Staleness.* Pointing out that informant "One's" information is only described as received by him "in the last five months" and that Informant "Two's" information simply states, in the present tense, that, according to Alphonse Cuzzo, Cuzzo performs certain acts in the gambling business, defendants complain that the information in the warrant is stale. Again defendants distort the facts by not bothering to state that the affidavit reports detailed FBI surveillance of the specific conduct related by the informants occurring five, four and three days before the warrant was issued.

(4) *Jurisdictional allegation.* Finally, defendants say that Reutter's affidavit, which alleged a violation of Title 18, United States Code, Section 1955, did not sufficiently show that five persons were involved, and that the operation had been in existence for more than thirty days, or had grossed more than $2,000 in any one day. Again the argument is false. FBI surveillance pinpointed nine individuals involved in the "spot", where gambling work had been gathered prior to delivery to the bank, who had been under observation for over seven months.*

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* Alternatively, the operation satisfied the $2,000 gross requirement by having been observed in operation for "two or more successive days in late August, 1972 (Section 1955(c); affidavit, 158-59a).

POINT V

The Double Jeopardy and Collateral Estoppel Claims are without merit.

Anthony Politi and Harry Weis were tried and acquitted in February, 1972 on federal charges that they conspired to operate and operated an illegal policy gambling business in Westchester County between March and May, 1971. Stressing the fact that the two cases contain a number of common defendants and co-conspirators and that the time period of the earlier prosecution is contained within that of this case, these defendants * contend that the doctrines of double jeopardy and collateral estoppel require reversal of their convictions. The argument is without merit both as to the conspiracy and substantive counts, since the record indisputably establishes that the convictions in this case arose from the defendants' participation in a policy gambling operation which was geographically and operationally separate from the gambling enterprise that was the subject of the earlier prosecution.

1. The Facts

Indictment 71 Cr. 857 and the Bill of Particulars thereunder named, as participants in a conspiracy to violate Section 1955, eight persons, who also appear as defendants or unindicted co-conspirators in this case.** A total of

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* Frangello contends that his conviction should be reversed under the doctrine of double jeopardy since it is based on the same evidence that led to his New York State conviction for promoting gambling and possession of gambling records. The District Court rejected his arguments and held that a state conviction followed by a federal conviction on the same facts does not constitute double jeopardy. *Bartkus* v. *Illinois*, 359 U.S. 121 (1959); *Robinson* v. *Neil*, 409 U.S. 505, 510 (1973).

** They include Anthony Politi, Harry Weis and Philip Politi named as defendants in both cases; Pasquelli Maselli, named as a

[Footnote continued on following page]

40 persons named in both cases, 21 in 71 Cr. 857 and 19 in this case, are not common to both indictments. Moreover, the "means paragraphs" and the overt acts alleged in the two indictments are completely different.

The proof under Indictment 71 Cr. 857 showed a conspiracy and substantive violations between March 16, 1971 and May 24, 1971. The proof under the indictment in this case showed a conspiracy and substantive violation between June, 1968 and January, 1973. All the proof offered at trial under 71 Cr. 857 related to a policy operation which was set up and operated in Westchester County. All of the proof at trial below related to a policy gambling operation set up and operated in Newburgh and Poughkeepsie.*

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defendant in 71 Cr. 857 but only as a co-conspirator here; Michael Roman, Robert Peters and Alphonse Cuzzo, named as defendants here but only as co-conspirators in 71 Cr. 857; and Thomas Collins, named only as a co-conspirator in each indictment. In addition, 71 Cr. 857 included 21 defendants and co-conspirators not named at all in this case; and this case includes 19 defendants and co-conspirators not named at all in 71 Cr. 857. Philip Politi never went to trial in 71 Cr. 857, and therefore does not join in this Point.

* Defendants note (Br. at p. 30) the fact that of the hundreds of identifying symbols for runners' work ("runners' codes") seized in this case, a total of thirty-five (twenty-four from a seizure at a motel in January, 1971, and eleven from a seizure from Robert Peters in August, 1972) also appeared on some records seized in the Westchester case. However, two completely different sets of policy "bank" books were seized at the motel—one covering the Westchester operation (and including the "runner codes" common to 71 Cr. 857) and another covering the Poughkeepsie-Newburgh operation (GXs 1A-1E). This fact only adds to the conclusion that the Westchester and the Poughkeepsie-Newburgh gambling operations were separate economic units resulting from different criminal agreements. So far as the Robert Peters seizure is concerned all of the 20 runners' codes were from the Westchester operation and merely demonstrated that on the date in question, Peters was engaged in working for the Westchester operation.

2. Double Jeopardy

a. The Conspiracy Count

Under the traditional double jeopardy test, offenses are "the same" when "the evidence required to support a conviction on one [of the indictments] would have been sufficient to warrant a conviction on the other." *United States* v. *Kramer*, 289 F.2d 909, 913 (2d Cir. 1961). Whether that or some looser standard, see *United States* v. *Mallah*, Dkt. No. 74-1327 (2d Cir., September 23, 1974), slip. op. 5475 at 5497 n. 7 and *United States* v. *Cioffi*, 487 F.2d 492, 496-498 (2d Cir. 1973), *cert. denied*, as *Cinzo* v. *United States*, 42 U.S.L.W. 3629 (May 13, 1974), be applied in this case, the fact that the prosecution below involved a separately organized and operated policy gambling business conducted in an entirely different locale from that of the first prosecution completely disposes of the double jeopardy issue.

In Indictment 71 Cr. 857 and the trial under it, the defendants and co-conspirators were involved solely in a Westchester County policy business. This case, as the statement of facts indicates, involves a distinct, conspiracy, earlier in origin, which ran parallel to and longer than the Westchester operation. Anthony Politi himself went directly to local policy runners in Newburgh in 1968, struck an agreement that they should work for him, and thus launched the entire Newburgh-Poughkeepsie operation which followed, under his direction, until at least 1972.

This Court's recent decision in *United States* v. *Mallah*, *supra*, is plainly distinguishable. There it was held that Vincent Pacelli, Jr.'s second conviction for conspiracy to violate the federal narcotics laws was invalid because the Government had failed "to demonstrate from the proof at the two trials that the criminal agreements [were] indeed separate and distinct." Slip op. at 5502. In contrast to

Mallah, here the record affirmatively reveals the separate "geographical scope of the conspiracies," slip op. at 5500, and that the two organizations catered to separate bettors in separate places and maintained separate bookkeeping records, all of which is compelling evidence that they were distinct economic enterprises. Furthermore, it cannot be too strongly emphasized that Anthony Politi personally organized the Newburgh-Poughkeepsie operation as an independent entity.

b. The Substantive Count

In any event, even if it could be said that Anthony Politi and Harry Weis were involved in a single overall conspiracy to set up and maintain illegal policy organizations in several places, the proof certainly established that the *substantive* gambling offenses proven at the two trials were different crimes. It is undisputed that the Newburgh-Poughkeepsie operation proven below catered to completely separate bettors in a different geographical area, maintaining completely separate records from runner to bank. All of the records seized at the 77 Broodway and 15 Eastview policy banks related only to the Newburgh-Poughkeepsie operation and post-dated the period covered by the first trial. The fact that those separate economic units may have been owned at the top by several men in common, who employed some common middle management personnel, does not affect the conclusion that the two operations were distinct "gambling businesses" within the meaning of Section 1955. If, instead of two gambling businesses, these upper echelon participants such as Anthony Politi, had comparable controlling interests in corporations engaged in legitimate business activities, the fact that they had controlling interests in two or more corporations would not make such ventures a single enterprise.

3. Collateral Estoppel

Anthony Politi and Weis claim that even if their double jeopardy argument is rejected, their prosecution in the instant case was barred by collateral estoppel.

In *Ashe* v. *Swenson*, 397 U.S. 436 (1970), the Supreme Court found that a prior verdict of acquittal:

> "requires a court to examine the record of a prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration."

In examining the records of both cases, the District Court below concluded:

> "I find on the basis of the stipulations before me relating to the evidence of record in 71 Cr. 857, and on examination of the relevant portions of the record itself in that case, that the jury in 71 Cr. 857 could without question have based its verdict on issues other than those sought to be foreclosed in this case; namely, a conspiracy to violate, and violation of gambling laws which were limited to Westchester County—as distinct from Rockland and Dutchess Counties" (967a).

This decision was obviously correct. Since none of the evidence presented in the first case related at all to the activities of Politi and Weis in the Newburgh-Poughkeepsie operation, the jury's acquittal in that case determined none of the factual questions presented in the trial below. The defendants have utterly failed to sustain their burden of demonstrating that the verdict in the earlier prosecution *necessarily* decided the issues that were litigated in the instant case. *United States* v. *Tramunti*, Dkt. No. 74-1398 (2d Cir., July 12, 1974), slip. op. 4811 at 4830; *United States* v. *Gugliaro*, Dkt. No. 74-1378 (2d Cir., July 19, 1974), slip. op. 4877 at 4880.

CONCLUSION

The judgments of conviction should be affirmed.

Respectfully submitted,

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AFFIDAVIT OF MAILING

State of New York)
County of New York)

J. Lawrence Silverman,

deposes and says that he is employed in the office of the Joint Strike Force for the Southern District of New York.

That on the 29th day of October, 1974 he served a copy of the within Government's Brief by placing the same in a properly postpaid franked enveloped addressed:

Irving Anolik, Esq.
225 Broadway
New York, N. Y.

And deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Courthouse, Foley Square, Borough of Manhattan, City of New York.

J. Lawrence Silverman

Sworn to before me this

29th day of October, 1974

William I. Aronwald

WILLIAM I. ARONWALD
Notary Public, State of New York
No. 4505839
Qualified in Rockland County
Commission Expires March 30, 1975

AFFIDAVIT OF MAILING

State of New York)
County of New York)

J. Lawrence Silverman,

deposes and says that he is employed in the office of the Joint Strike Force for the Southern District of New York.

That on the 29th day of October, 1974 he served a copy of the within by placing the same in a properly postpaid franked enveloped addressed:

Herald Price Fahringer, Esq.
One Niagara Square
Buffalo, N. Y. 14204

And deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Courthouse, Foley Square, Borough of Manhattan, City of New York.

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Notary Public, State of New York
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